

**AND NOW**, this 19th day of May, 2017, after carefully considering the petition for habeas corpus under 28 U.S.C. § 2254 filed by the petitioner *pro se*, Johnnie L. Simmons, Jr. (Doc. No. 1), the supplemental petition in support of the petition for habeas corpus filed by the petitioner (Doc. No. 14), the response to the petition filed by the respondents (Doc. No. 16), the reply filed by the petitioner (Doc. No. 17), and United States Magistrate Judge Thomas J. Rueter's report and recommendation filed on February 14, 2017 (Doc. No. 18); and no party having filed written objections to the report and recommendation; accordingly, it is hereby **ORDERED** as follows:

2. The petition for writ of habeas corpus is **DISMISSED WITHOUT PREJUDICE** to be refiled after the petitioner exhausts his state court remedies;
3. The petitioner has not made a substantial showing of the denial of a constitutional right and is therefore not entitled to a certificate of appealability, 28 U.S.C. § 2253(c)(2); and
4. The clerk of court shall mark this case as **CLOSED**.

BY THE COURT:

/s/ Edward G. Smith  
EDWARD G. SMITH, J.

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better practice is for the district judge to afford some level of review to dispositive legal issues raised by the report.” *Id.* As such, the court will review the report for plain error. *See Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (“In the absence of a timely objection, . . . this Court will review [the magistrate judge’s] Report and Recommendation for clear error.” (internal quotation marks omitted)). The court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). The court has reviewed Judge Rueter’s report for plain error and has found none.